IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 29428 of 2004(C)

PETITIONER:

PUTHENANGADI FLOUR & OIL MILLS,
REP. BY ITS PARTNER N.J.NIXON,
KALLETTUMKARA, TRISSUR.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SMT.K.V.RESHMI

RESPONDENTS:
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1. THE DISTRICT INDUSTIRES CENTER,
THRISSUR REP. BY ITS GENERAL MANAGER.

2. THE DEPARTMENT OF DISTRICT INDUSTRIES
AND COMMERCE REP. BY ITS DIRECTOR,
THIRUVANANTHAPURAM.

3. THE STATE OF KERALA REP. BY ITS
SECRETARY TO GOVERNMENT, DEPARTMENT OF INDUSTRIES
(B), THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER OF TAX EXEMPTION ISSUED BY R1 DT.10.10.94.

P2: TRUE COPY OF CERTIFICATE OF REGISTRATION AS A SICK UNIT DT.7.10.96 ISSUED BY R1.

P3: TRUE COPY OF ORDER ISSUED BY R1 DT.22.3.2002.

P4: TRUE COPY OF ORDER ISSUED BY R2 DT.24.5.2003 DISMISSING THE APPEAL.

P5: TRUE COPY OF ORDER DT.25.9.93 ISSUED BY R3.

P6: TRUE COPY OF ORDER DT.27.6.03 IN WPC 20329/2003 PASSED BY THIS HON'BLE COURT.

P7: TRUE COPY OF ORDER DT.26.2.04 PASSED BY R2.

P8: TRUE COPY OF ORDER DT.27.7;.2004 PASSED BY R1.

P9: TRUE COPY OF NOTICE DT.22.9.2004 ISSUED BY DEPUTY COMMISSIONER, COMMERCIAL TAXES, TRISSUR.

P10: TRUE COPY OF ORDER DT.13.12.2004 OF THE DY. COMMISSIONER, THRISSUR.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.29428 of 2004

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Dated this the 30th day of November, 2007.

JUDGMENT

The petitioner is an oil mill crushing copra to coconut oil and oil cake. The petitioner was granted sales tax exemption for the first five years from date of commencement of commercial production i.e. from 14.1.1989 to 13.1.1994 based on G.O.(P) No.68/90/ID dated 31.3.1990. However, petitioner did not run the unit for the whole period or availed sales tax exemption. After expiry of the exemption period, the unit applied for benefit under the Sick Unit Revival Programme under which the unavailed exemption was extended to the petitioner for the period 7.10.1996 to 6.10.2001. Being dissatisfied with this, petitioner applied for exemption on additional investments made for the purchase of a copra drier and diesel generator set. While re-examining this matter, the department found that exemption to oil mill was withdrawn by the Government through Notification SRO 1729/93 which came into force on 1.1.1994. In fact, in the said notification several items were brought in the negative list and crushing of copra is one such item. In other words, after the commencement of this notification issued under Section 10 of the KGST

Act, crushing of copra is not a manufacturing activity entitling the unit for sales tax exemption. Moreover, under the Sick Unit Revival Programme also, petitioner was not entitled to exemption because G.O.(MS) No.169/95/ID dated 1.11.1995 provide for sales tax benefit only to specific industries and oil mill is not one industry covered by it. Even though petitioner was rightly declined exemption based on relevant Government Orders, petitioner produced a Government letter and obtained Ext.P6 judgment in W.P.(C) No.20329/2003 which directed the State Level Committee to reconsider the appeal. Pursuant to the said judgment, State Level Committee considered the matter vide Ext.P7.

2. I heard counsel appearing for the petitioner and the Government Pleader and have also gone through Ext.P7 order. I find the only argument of the petitioner is based on a Government's letter which is no longer in force after Sales Tax Exemption Manual was published by the Government on 1.11.1994. Moreover, exemption cannot be given based on letters issued by the Government, but has to be given based on notification issued under Section 10 of the Act. The petitioner has no case that copra crushing does not come within the negative list under the relevant notification. Therefore, the claim made by the petitioner in 1999 for sales tax exemption was rightly turned down. The O.P. fails and is dismissed. If the

consequence of denial of sales tax exemption has retrospective effect, I feel petitioner should be given rebate of interest payable under Section 23(3). The Assessing Officer is directed to grant partial waiver of interest provided full arrears are paid within the time fixed by him. The petitioner will produce copy of this judgment, remit tax and apply for reduction or waiver of interest. If tax is paid within the time granted by the officer, he will grant waiver of interest in terms of the last amnesty scheme, if no better scheme prevailing now is availed by petitioner.

C.N.RAMACHANDRAN NAIR
Judge

pms